



July 23, 2019

Submitted via email to:

David Mendias
U.S. Fish and Wildlife Service
ESA Litigation/FOIA Coordinator
USFWS-Ecological Services
500 Gold Ave SW
Albuquerque, NM 87102
Office: 505-248-6929 / Fax: 505-248-6788
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Freedom of Information Act Request

Dear Mr. Mendias,

The Sierra Club makes this request for records, regardless of format, medium, or physical characteristics, including electronic records and information, email, audiotapes, videotapes, and photographs, pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, et seq.

We request records dating from December 1, 2018 through the present pertaining to consultations, interactions, reports, meetings, and discussions regarding both existing and proposed border fences (also referred to as the "border wall" and "tactical infrastructure" and "levee-wall") that either have impacted or would have the potential to impact the Lower Rio Grande Valley National Wildlife Refuge and/or the Santa Ana National Wildlife Refuge. We request both documents and discussions that occurred within US Fish and Wildlife, as well as between US Fish and Wildlife and the Department of the Interior, the International Boundary and Water Commission, US Army Corps of Engineers, Customs and Border Protection, the Border Patrol, the Department of Homeland Security, Baker Engineering, and/or Logistics Management Institute. Please include internal documents and reports, powerpoint presentations, maps, photographs, briefings, emails, contracts (both draft and final), and memorandum of understanding pertaining to this issue. Include as well emails, letters, call logs, and other communications between CBP or DHS and USFW or DOI regarding this topic.

Communications, emails, memos, and letters discussing the manner that US Fish and Wildlife staff should or should not discuss border fencing and/or border walls with the press and/or the public should also be provided.

Please search responsive records regardless of format, medium, or physical characteristics. Where possible, please produce records electronically, in PDF or TIF format on a CD-ROM. We seek records of any kind, including electronic records, e-mail, audiotapes, videotapes, and photographs. Our request includes telephone messages, voice mail messages, e-mail, daily agenda and calendars, information about scheduled meetings and/or discussions regarding the aforementioned topics, whether in person or over the telephone, agendas for those meetings and/or discussions, participants included in those meetings and/or discussions, and transcripts, notes and/or minutes from any such meetings and/or discussions.

If it is your position that any portion of the requested records is exempt from disclosure, the Sierra Club requests that you provide it with an index of those documents as required under Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1972). As you are aware, a Vaughn index must describe each document claimed as exempt with sufficient specificity "to permit a

reasoned judgment as to whether the material is actually exempt under FOIA.” Founding Church of Scientology v. Bell, 603 F.2d 945, 949 (D.C. Cir. 1979). Moreover, the Vaughn index must “describe each document or portion thereof withheld, and for **each** withholding it must discuss the consequences of supplying the sought-after information.” King v. U.S. Department of Justice, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphasis added). Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’” Id. At 224 (citing Mead Data Central v. U.S. Department of the Air Force, 566 F.2d 242, 251 (D.C. Cir. 1977)).

In the event that some portions of the requested records are properly exempt from disclosure, please disclose any reasonable segregable non-exempt portions of the requested records. See 5 U.S.C § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. Mead Data Central, 566 F.2d at 261. Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a Vaughn index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. Part 5, the Sierra Club requests a waiver of fees associated with processing this request for records. The waiver is in the public interest because furnishing this information primarily benefits the general public. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the Sierra Club and the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes. 5 U.S.C. §552(a)(4)(A)(iii). See, e.g., McClellan Ecological v. Carlucci, 835 F.2d 1282, 1285 (9th Cir. 1987).

The records requested by the Sierra Club are likely to contribute to the public’s understanding of the impacts of border fencing along the U.S. – Mexico border, and ongoing efforts by Customs and Border Protection and US Fish and Wildlife to mitigate those impacts. This policy issue has been the subject of frequent press inquiry and public debate.

Under these circumstances, the Sierra Club fully satisfied the criteria for a fee waiver.

Conclusion

Please respond to this request in writing within an expedited time-frame. If all of the requested documents are not available within that time period, the Sierra Club requests that you provide all requested records or portions of records that are available within that time period.

If you have any questions about this request or foresee any problems in releasing fully the requested records within the twenty-day period, please contact me at (956) 532-5983 or lrqvsierraclub@gmail.com. Also, if the Sierra Club’s request for a fee waiver is not granted in full, please contact me immediately upon making such a determination.

Thank you.

Please send requested documents to:

Scott Nicol

Sierra Club Borderlands Team
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McAllen, TX 78504
lrgvsierraclub@gmail.com